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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,638	02/16/2002	Thomas R. Gross	TGR 100C	2580

7590

03/26/2004

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EXAMINER

SELF, SHELLEY M

ART UNIT	PAPER NUMBER
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3725

9

DATE MAILED: 03/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/076,638

Applicant(s)

GROSS ET AL.

Examiner

Shelley Self

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 8-16 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 8-16 and 19-25 is/are rejected.
- 7) ☒ Claim(s) 3 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

The amendment filed on November 9, 2003 under 37 CFR 1.131 has been considered but is ineffective to overcome the prior art reference and an action on the merits follows.

Specification

The amendment filed November 9, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "*an infeed in communication with the tapered cutting drum, wherein the bellyband extends from proximate to the anvil to about 90 degrees to 135 degrees as measured from a line beginning parallel to the infeed at a height of the center of the drum*" (clm. 8). Accordingly, the claim(s) has not been further treated on the merits.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 5 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claim 5, it is unclear how the cutting drum is tapered

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toward both ends, with the parent claim, defines the tapered drum to "having a cross-section with an outer diameter that is smaller than an outer diameter of another cross-section", i.e.; if one outer diameter is larger than another, how can the drum taper at both ends?

With regard to the claim 24, the term, "*associated with it*" renders the claim indefinite. It is not clear what, "associated with it" means and the term fails to positively recite the critical interrelationship between the elements.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 8-21 rejected under 35 U.S.C. 103(a) as being unpatentable over Morey (5,005,620) in view of Hilgarth (5,836,528). With regard to claims 1, 2, 8, 10, 21-23 and 25, Morey discloses a drum shredder comprising a housing (18) a cutting drum (23) at least one cutting implement (70), an anvil (130), a drive and a bellyband (40). Hilgarth teaches in a drum shredder a housing, the use of a tapered cutting drum having an essentially solid outer surface, a cutting implement, anvil and drive (figs. 1-3). Hilgarth teaches the use of a rotatably mounting tapered cutting drum wherein the cutting drum has a cross-section with an outer diameter that is smaller than an outer diameter of another cross-section (fig. 2) and wherein the drum is tapered toward the middle of the drum so as to be able to comminute or chip large and small branches.

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Because the references are from a similar art, it would have been obvious at the time of the invention to one of ordinary level of skill in the art to replace Morey's cylindrical cutting drum with Hilgarth's tapered cylindrical cutting drum so as to be able to comminute or chip both small and large branches.

As to the anvil cooperating with the cutting drum to provide an acute cutting angle (clm. 2). Examiner notes that a tapered drum in conjunction with the anvil (130) results in an acute angle. Further, Hilgarth teaches an acute angle.

As to the essentially outer surface, Examiner notes that the outer portion of Hilgarth is solid (fig. 2)

With regard to claims 9, 19 and 24, both Morey and Hilgarth disclose a cutting implement having a pocket (Morey, 70, 72; Hilgarth 5, 8) associated with it for carrying reduced material.

With regard to claim 11, Morey discloses a transition having a non-linear wall (fig. 4).

With regard to claims 12-15, Morey discloses a semi-circular wall. More does not disclose a transition having a multi-sided rear wall, a V-shaped wall, and inverted V-shaped or at least 5 sides. It would have been obvious at the time of the invention to construct Morey having a transition wherein the wall is multi-sided, V-shaped wall, inverted V-shaped or at least 5 sides, since Applicant has not disclosed that any such shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a transition having any shape forming to the drum and bellyband so as to create a void, space.

With regard to claim 16, Morey does not disclose a bellyband having a substantially V-shaped or inverted V-shaped wall. Morey does however disclose a bellyband conforming to the contour of the drum. It would have been obvious at the time of the invention to construct the bellyband having a substantially V-shaped or inverted V-shaped wall, since Applicant has not disclosed that such construction/shape solves a stated problem or is for any particular purpose. Additionally it appears that the invention would perform equally well with a bellyband of any construction.

With regard to claim 20, Morey discloses a bellyband conforming to the shape of the cutting drum.

Allowable Subject Matter

Claims 3 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (703) 305-5299. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Allen Ostrager can be reached at (703) 308-3136. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

SSelf
February 24, 2004


ALLEN OSTRAGER
SUPERVISORY PATENT EXAMINER
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